

# Exhibit A

*Adams v. Kraft*, No. 5:10-CV-  
00602-LHK

Docket number 144

KAMALA D. HARRIS  
Attorney General of California  
JOHN P. DEVINE  
Supervising Deputy Attorney General  
DANIEL B. ALWEISS  
Deputy Attorney General  
State Bar No. 191560  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 703-1276  
Fax: (415) 703-5480  
E-mail: Daniel.Alweiss@doj.ca.gov  
*Attorneys for California State Park Rangers Kraft,  
Hauck, Best, and Lingenfelter*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

**BERRY LYNN ADAMS,**

Plaintiff,

v.

**DANIEL L. KRAFT, PHILLIP HAUCK,  
KIRK LINGENFELTER, K. P. BEST,**

Defendants.

C10-00602 LHK

**OBJECTIONS TO EVIDENCE  
OFFERED IN OPPOSITION TO  
MOTION FOR SUMMARY JUDGMENT**

Date: October 20, 2011  
Time: 1:30 PM.  
Courtroom: 4  
Judge The Honorable Lucy H. Koh  
Trial Date: November 14, 2011  
Action Filed: February 10, 2010

Defendants object to the following evidence submitted by Adams in opposition to  
Defendants' summary judgment motion.

**DECLARATIONS**

"An affidavit or declaration used to support or oppose a motion must be made on personal  
knowledge, set out facts that would be admissible in evidence, and show that the affiant or  
declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4), FRE 602 and  
702. "'Personal knowledge' means a present recollection of an impression derived from the  
exercise of the witness' own senses." FRE §702, Law Revision Commission Comment, citing 2  
Wigmore, Evidence § 657 at 762 (3d ed. 1940).

Matters in a declaration must be known to the declarant personally, as distinguished from matters which are opinion or hearsay. *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406, 1412 (9th Cir. 1995). “Under the personal knowledge standard, an affidavit is inadmissible if the witness could not have actually perceived or observed that which he testifies to.” *Argo v. Blue Cross and Blue Shield of Kansas, Inc.*, 452 F.3d 1193, 1200 (10th Cir. 2006), citation omitted. “Accordingly, at the summary judgment stage, statements of mere belief in an affidavit must be disregarded.” *Id.*, internal quotation omitted.

“[H]earsay evidence in Rule 56 affidavits is entitled to no weight.” *Pan-Islamic Trade Corp. v. Exxon Corp.*, 632 F.2d 539, 556 (5th Cir.1980), internal bracket omitted. “[H]earsay evidence is inadmissible and may not be considered by this court on review of a summary judgment.” *Blair Foods, Inc. v. Ranchers Cotton Oil*, 610 F.2d 665, 667 (9th Cir.1980), internal quotes omitted.

#### 1. Objections to Declaration of Jeremy Evans

There is no showing of personal knowledge for numerous assertions, much of this declaration is based on opinion and belief, and relies on inadmissible hearsay. Further, this declaration is unsigned and thus lacks “[t]he requirement of authentication or identification as a condition precedent to admissibility.” FRE 901(a).

–“Berry did not have a 12 pack case of beer in his Jeep.” (Evans Dec. at 2:1-2.) There is no showing that the declarant ever looked inside the jeep in the first place or had any percipient knowledge of what was inside the jeep. This is also the exact same statement attributed to declarant Ryan Dunlap.

–“It was clear that Berry forced Best to rescind the ticket due to the overwhelming eyewitness evidence.” (Evans Dec. at 2:12-13.) This is pure opinion testimony and is based on the declarant’s speculation.

–Paragraph No. 5, lines 15-19, related to being present when Kraft and Callison went into the ocean. The declarant cannot specify a date, time or location that he claims to have seen this event. This is also the exact same statement attributed to declarant Jared Valdez.

///

1 -Paragraph No. 6, lines 20-27, related to singling Adams out for negative  
2 treatment. The declarant speculates that what he saw was Adams being singled out, however,  
3 there is no foundational showing that he has seen Best and Kraft's treatment of all other people.  
4 The declarant speculates Adams was singled out for punishment but fails to indicate what this  
5 punishment was or that he actually witnessed this punishment. The declarant also provided his  
6 information and belief that Adams was retaliated against for his negative comments. The  
7 declarant did not perceive these events.

8 -Paragraph No. 7, line 28, page 3, lines 1-19, related to singling Adams out for  
9 negative treatment. The declarant bases much of this paragraph on his belief and opinion.

10 All statements attributed to Adams, Best, unidentified rangers and what the declarant  
11 claims he "heard" are inadmissible hearsay and should be stricken.

## 12 **2. Objections to Declaration of Ryan Dunlap**

13 There is no showing of personal knowledge for numerous assertions, much of this  
14 declaration is based on opinion and belief, and relies on inadmissible hearsay. Further, this  
15 declaration is unsigned and thus lacks "[t]he requirement of authentication or identification as a  
16 condition precedent to admissibility." FRE 901(a).

17 -"Berry did not have a 12 pack case of beer in his Jeep." (Dunlap Dec. at 2:1-  
18 2.) There is no showing that the declarant ever looked inside the jeep in the first place or had any  
19 percipient knowledge of what was inside the jeep. This is also the exact same statement  
20 attributed to declarant Jeremy Evans.

21 -Paragraph No. 5, lines 8-16, related to singling Adams out for negative  
22 treatment. The declarant speculates that what he saw was Adams being singled out, however,  
23 there is no foundational showing that he has seen Best and Kraft's treatment of all other people.  
24 The declarant speculates Adams was singled out for punishment but fails to indicate what this  
25 punishment was or that he actually witnessed this punishment. The declarant also provided his  
26 information and belief that Adams was retaliated against for his negative comments. The  
27 declarant did not perceive these events.

28 ///

1 All statements attributed to Adams, Best, unidentified rangers and what the declarant  
2 claims he "heard" are inadmissible hearsay and should be stricken.

3 **3. Objections to Declaration of Jared Valdez**

4 There is no showing of personal knowledge for numerous assertions, much of this  
5 declaration is based on opinion and belief, and relies on inadmissible hearsay. Further, this  
6 declaration is unsigned and thus lacks "[t]he requirement of authentication or identification as a  
7 condition precedent to admissibility." FRE 901(a).

8 -Paragraph No. 2, lines 26-28, page 2, lines 1-2, related to being present when  
9 Kraft and Callison went into the ocean. The declarant cannot specify a date, time or location that  
10 he claims to have seen this event. This is also the exact same statement attributed to declarant  
11 Jeremy Evans.

12 -Paragraph No. 3, lines 3-10, related to singling Adams out for negative  
13 treatment. The declarant speculates that what he saw was Adams being singled out, however,  
14 there is no foundational showing that he has seen Best and Kraft's treatment of all other people.  
15 The declarant speculates Adams was singled out for punishment but fails to indicate what this  
16 punishment was or that he actually witnessed this punishment. The declarant also provided his  
17 information and belief that Adams was retaliated against for his negative comments. The  
18 declarant did not perceive these events.

19 -Paragraph No. 7, line 28, page 3, lines 1-19, related to singling Adams out for  
20 negative treatment. The declarant bases much of this paragraph on his belief and opinion. The  
21 declarant did not perceive these events.

22 All statements attributed to Adams, Best, unidentified rangers and what the declarant  
23 claims he "heard" are inadmissible hearsay and should be stricken.

24 **4. Objections to Declaration of Gavin Nelson**

25 There is no showing of personal knowledge for numerous assertions, much of this  
26 declaration is based on opinion and belief, and relies on inadmissible hearsay. Further, this  
27 declaration is unsigned and thus lacks "[t]he requirement of authentication or identification as a  
28 condition precedent to admissibility." FRE 901(a).

1 -Paragraph No. 2, lines 26-28, page 2, lines 1-2, related to being present when  
2 Kraft and Callison went into the ocean. The declarant cannot specify a date, time or location that  
3 he claims to have seen this event. This is also the exact same statement attributed to declarant  
4 Jared Valdez.

5 -Paragraph No. 3, lines 3-7, related to singling Adams out for negative  
6 treatment. The declarant speculates that what he saw was Adams being singled out, however,  
7 there is no foundational showing that he has seen Best and Kraft's treatment of all other people.  
8 The declarant speculates Adams was singled out for punishment but fails to indicate what this  
9 punishment was or that he actually witnessed this punishment. The declarant did not perceive  
10 these events.

11 All statements attributed to Adams, Best, unidentified rangers and what the declarant  
12 claims he "heard" are inadmissible hearsay and should be stricken.

### 13 **5. Objections to Declaration of Juan Arias**

14 The declarant cannot competently identify the person who allegedly kicked Adams  
15 and relies on inadmissible hearsay. Further, this declaration is unsigned and thus lacks "[t]he  
16 requirement of authentication or identification as a condition precedent to admissibility." FRE  
17 901(a).

18 -Page 2, lines 2-4, related to the alleged kick. The declarant lacks personal  
19 knowledge as to who made the kick and only identified the person as a "Ranger."

20 All statements attributed to Adams, unidentified rangers and what the declarant  
21 claims he "heard" are inadmissible hearsay and should be stricken.

### 22 **6. Objections to Declaration of Angel Huerta**

23 There is no showing of personal knowledge for numerous assertions, much of this  
24 declaration is based on opinion and belief, and relies on inadmissible hearsay. Further, this  
25 declaration is unsigned and thus lacks "[t]he requirement of authentication or identification as a  
26 condition precedent to admissibility." FRE 901(a).

27 ///

28 ///

1 -Paragraph No. 2, lines 26-28, page 2, lines 1-2, related to singling Adams out  
2 for negative treatment. The declarant speculates that what he saw was Adams being singled out,  
3 however, there is no foundational showing that he has seen Best and Kraft's treatment of all other  
4 people. The declarant speculates Adams was singled out for punishment but fails to indicate what  
5 this punishment was or that he actually witnessed this punishment. The declarant also provided  
6 his information and belief that Adams was retaliated against for his negative comments and ticket  
7 issue with Best. The declarant did not perceive these events.

8 All statements attributed to Adams, Best, unidentified rangers and what the declarant  
9 claims he "heard" are inadmissible hearsay and should be stricken.

#### 10 **7. Objections to Declaration of Bob Dickie**

11 There is no showing of personal knowledge for numerous assertions, much of this  
12 declaration is based on opinion and belief, and relies on inadmissible hearsay. Further, this  
13 declaration is unsigned and thus lacks "[t]he requirement of authentication or identification as a  
14 condition precedent to admissibility." FRE 901(a).

15 -"Berry did not have a 12 pack case of beer in his Jeep." (Dickie Dec. at 2:1-2.)  
16 There is no showing that the declarant ever looked inside the jeep in the first place or had any  
17 percipient knowledge of what was inside the jeep. This is also the exact same statement  
18 attributed to declarant Ryan Dunlap.

19 -"It was clear that Berry forced Best to rescind the ticket due to the  
20 overwhelming eyewitness evidence." (Dickie Dec. 2:12-13.) This is pure opinion testimony and  
21 is based on the declarant's speculation.

22 -Paragraph No. 5, lines 15-23, related to singling Adams out for negative  
23 treatment. The declarant speculates that what he saw was Adams being singled out, however,  
24 there is no foundational showing that he has seen Best and Kraft's treatment of all other people.  
25 The declarant speculates Adams was singled out for punishment but fails to indicate what this  
26 punishment was or that he actually witnessed this punishment. The declarant also provided his  
27 information and belief that Adams was retaliated against for his negative comments. The  
28 declarant did not perceive these events.

1 All statements attributed to Adams, Best, unidentified rangers and what the declarant  
2 claims he "heard" are inadmissible hearsay and should be stricken.

3 **8. Objections to Declaration of Berry Adams**

4 There is no showing of personal knowledge for numerous assertions, much of this  
5 declaration is based on opinion and belief, and relies on inadmissible hearsay. Further, this  
6 declaration is unsigned and thus lacks "[t]he requirement of authentication or identification as a  
7 condition precedent to admissibility." FRE 901(a).

8 All statements attributed to Hauck, Best, Kraft, Lingenfelter, unidentified rangers and  
9 what the declarant claims he "heard" are inadmissible hearsay and should be stricken.

10 All statements which reference any events or activities, including Adams's criminal  
11 trial, after the date of the arrest are irrelevant, confusion, and not probative of any issue sin this  
12 case and should be excluded. FRE 402.

13 All statements which Adams did not perceive, or are based on opinion and belief,  
14 should be excluded.

15 **DOCUMENTARY EVIDENCE**

16 "The requirement of authentication or identification as a condition precedent to  
17 admissibility is satisfied by evidence sufficient to support a finding that the matter in question is  
18 what its proponent claims." FRE 901(a).

19 **1. Video attached to declaration of Juan Arias should be excluded.**

20 There was no DVD or any physical item attached to the Declaration of Juan Arias,  
21 nor was there any Exhibit 1. Adams failed to serve the video attached as Exhibit 1 to the  
22 Declaration of Juan Arias. As a matter of fairness, it should be excluded.

23 To the extent this video is the same exact video of what has been produced in  
24 discovery, then it should be excluded as inadmissible hearsay, lacks authentication, and is not  
25 relevant to issues in this case.

26 This video is inadmissible hearsay. FRE 801. This video depicts oral assertions and  
27 nonverbal conduct intended as an assertion, which is offered to prove the truth of what it asserts.  
28 Accordingly, under Rule 802 it should be excluded and there is no exception under Rule 803.

1 FRE 802 and 803.

2 This video lacks authentication. FRE 901. The alleged video “appears to start and  
3 stop at times,” and appears heavily edited. Declarant Arias claims “it accurately reflects what  
4 happened on June 24, 2009.” (Arias Dec. at 2:16.) However, the video Defendants reviewed  
5 begins in the middle of Adams’s arrest, and only depicts the backsides of various officers and  
6 Adams being escorted down the pier. The video fails to depict Adams’s behavior at the moment  
7 Hauck first made contact with him, the knives Adams had on his belt, Adams’s behavior prior to  
8 being taken into custody, Adams yelling at Hauck, and fails to show the alleged “kick” of his  
9 right hand. The video reviewed is not an accurate reflection of “what happened on June 24,  
10 2009,” and only has non-sequential select events which are immaterial to this case.

11 This video is not relevant and is a waste of court resources. This video is not relevant  
12 to the key issues in this case related to excessive force. FRE 401. At no point does this video  
13 show a clear depiction of Adams’s physical behavior, his movements, or his yelling. It is  
14 impossible to tell from this video what, if anything, Adams is doing. It is also impossible to tell  
15 what Hauck or Kraft physically did to Adams, and what they were confronted with. This video is  
16 not relevant under Rules 401 and 402. Also, since, this video has little or no sound, does not  
17 depict anything said in this case, and appears heavily edited, review of this video will be a waste  
18 of court time and resources and thus should be excluded. FRE 403.

19 **2. Select pages from Adams’s criminal trial transcript are inadmissible.**

20 This transcript is inadmissible hearsay. FRE 801. The proffered pages contain oral  
21 assertions, which are offered to prove the truth of what they assert. Accordingly, under Rule 802  
22 it should be excluded and there is no exception under Rule 803. FRE 802 and 803.

23 This transcript lacks authentication. FRE 901. The offered pages are not sequential  
24 and it is unclear who is responding to questions at various points, and there is no showing this  
25 testimony was sworn.

26 For example, Adams offers the transcript as Exhibit 1 to the declaration of his  
27 attorney Kate Wells. Exhibit 1 begins with the cover page of the Reporter’s Transcript for his  
28 trial on September 29, 2009. The second page begins at page 137 and continues with select

1 pages up to page 226. At no point is the person providing answers identified by name or anything  
2 specific besides the letter "A." Further, the context of the offered transcript is unclear. Adams  
3 offers statements, taken out of context, which are responsive to subjects discussed in previous  
4 pages, not included in Exhibit 1.

5 It is simply impossible to tell from the offered transcript if these were the responses  
6 of Hauck and Kraft, and if such testimony was sworn. Accordingly, such transcript lacks  
7 authentication.

8 The offered transcript is not relevant and is a waste of court resources. This transcript  
9 is not relevant to the key issues in this case related to probable cause and excessive force. FRE  
10 401. Adams offers vague statements, taken out of context, for impeachment purposes in an  
11 attempt to challenge the credibility of Hauck and Kraft.

12 However, none of these statements contradict any of the declaration testimony offered  
13 by Hauck and Kraft. Adams had over a year to depose these officers and failed to do so.

14 Accordingly, this transcript is not relevant under Rules 401 and 402, and spending  
15 time authenticating the transcript pages will be a waste of court time and resources, and thus  
16 should be excluded. FRE 403.

17 Dated: September 29, 2011

Respectfully submitted,

18  
19 KAMALA D. HARRIS  
Attorney General of California  
20 JOHN P. DEVINE  
Supervising Deputy Attorney General

21 /s/ DANIEL B. ALWEISS

22 DANIEL B. ALWEISS  
23 Deputy Attorney General  
Attorneys for California State Park Rangers  
24 Kraft, Hauck, Best, and Lingenfelter

# Exhibit B

*Johnson v. Lockheed Martin Corp.*, No. 5:11-CV-01140-LHK

Docket number 34

PETER N. LAMBERTO, State Bar No. 061813  
160 West Santa Clara, Suite 1050  
San Jose, CA 95113-2311  
Telephone: (408) 999-0300  
Facsimile: (408) 999-0301

Attorneys for Plaintiff Marshall Johnson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE

MARSHALL JOHNSON,

Plaintiff,

vs.

LOCKHEED MARTIN, and DOES 1-20,

Defendants.

Case No. **5:11-cv-01140 LHK**

**Date Action Filed: Feb. 16, 2011**

**Date of Trial: Aug. 27, 2012**

**Date of Motion: July, 17, 2012**

**Objection to All Evidence Offered in  
Support of Defendant's Motion for  
Summary Judgment/Summary  
Adjudication; Request for Issue  
Sanction (Liability) and Costs and  
Fees Against Defendant and  
Counsel;**

**F.R.Civ.P. 26 (a)(1)(A); (g)(3); Fed.  
Rules of Evidence 702, 703, 705.**

Plaintiff Marshall Johnson hereby objects to all declarations offered in support of Defendant's motion herein, on the basis that the Rule 26 (a)(1)(A) duty to disclose all persons with discoverable information was so substantially violated by defendant and counsel for defendant through his/her signed Initial Disclosure, and Supplemental Disclosure, that Plaintiff has been deprived of the right to a fair trial and proper pre-trial discovery. The persons disclosed did not offer any information about how the particular selection of Plaintiff occurred for the layoff that is the subject of this case.

The disclosed persons by defendant were Michelle Freeman, Gail Banford, and Holly Ramirez. (See Ex. A to Lamberto declaration). Discovery finally revealed through the

1 deposition of Gary Bartmann on the day before the close of discovery (March 16, 2012), that  
2 the actual decision about whom to lay off was made at a meeting in Denver some time in  
3 2009, attended by five persons: Michelle Freeman, Gary Bartmann, Holly Ramirez, someone  
4 named Shaeffer, and an unrecalled (by Bartmann) fifth person.

5 At all times relevant herein, upon information and belief, defendant and its counsel  
6 knew that Freeman was fighting a reportedly fatal cancer, and had advised defendant and its  
7 counsel that she would not participate in this matter, nor give a statement or deposition. She  
8 resides in Florida.

9 Holly Ramirez denied knowing, in her own deposition on October 13, 2011, that she  
10 knew how the decision to lay off Plaintiff was made, failing to mention that it was done at a  
11 meeting she attended, as referred to above. (See Ex. B to Lamberto declaration.) Susan Gail  
12 Banford was not present, and knew nothing about it how the decision was arrived at or made.  
13 When discovery parameters were set by the court, Plaintiff did not realize it was going to take  
14 six months to determine who the real witnesses were, at the close of discovery.

15 An effort to extend the discovery cutoff so Plaintiff could depose Shaeffer and  
16 compare his testimony to the proliferation of Bartmann declarations, was met with a refusal  
17 by **defendant**, which communicated the decision through counsel.

18 Finally, Plaintiff has been denied adequate discovery through the intentional  
19 misdirection of defendant and counsel for defendant through their affirmative signatures on  
20 the disclosures. Defendant now asserts that layoffs were not determined on the announced  
21 criteria (last 3 year job ratings, years of service, and use of differentiator for ties), but rather on  
22 Plaintiff being the odd man out in a “department” that was supposedly comprised of three  
23 persons: himself, Gary Ehle, and Daniel Faria, managed by Gail Banford. Plaintiff never  
24 knew, in 29 years, that he was supposedly in some kind of department (TC3S), with only Ehle  
25 and Faria, managed by Banford. Plaintiff has had virtually no opportunity to explore this  
26 assertion by defendant.

27 The court is aware of the gravity of supplying totally useless information to a party  
28 pursuant to Rule 26 (a), with the signature of counsel, who has a duty to make sure the

1 information is accurate. F.R.CIV.P. Rule 26(g)(3) allows the court to take appropriate action  
2 to rectify the damage done to Plaintiff in misdirecting and restricting Plaintiff's discovery into  
3 the reasons for his layoff, which he claims were race-based, since defendant has offered no  
4 verifiable alternative.

5 Moreover, not one piece of paper has been produced by defendant in discovery that  
6 identifies Plaintiff as a member of a 3 person "department" that supposedly **reported** to Gail  
7 Banford, as claimed.

8 The court certainly has the authority to bar the declarations of Bartmann in particular,  
9 and all others offered in support of the motion, based on the conduct of defendant in failing  
10 utterly to provide meaningful information per Rule 26(a)(1)(A). *Falconer v. Penn Mar., Inc.*  
11 (2005, DC Me) 232 FRD 37, 63 FR Serv 3<sup>rd</sup> 434. Under these circumstances, the court is  
12 hereby requested to bar all proof offered by defendant in support of the instant motion, and to  
13 grant this request for an Issue Sanction on the issue of defendant's liability on all causes of  
14 action herein.

15 Because the attorney affirmations on the Rule 26 disclosures (initial and supplemental  
16 by defendant), Plaintiff also requests sanctions in the form of costs and reasonable attorney's  
17 fees for deposing Banford and Rodriguez to find out they knew nothing about how the  
18 decision to lay off Plaintiff actually came down.

19 Dated: July 13, 2012

Law Office of Peter Lamberto

21 By: \_\_\_\_\_  
22 PETER N. LAMBERTO  
23 Attorneys for Plaintiff Marshall Johnson  
24  
25  
26  
27  
28

PETER N. LAMBERTO, State Bar No. 061813  
160 West Santa Clara, Suite 1050  
San Jose, CA 95113-2311  
Telephone: (408) 999-0300  
Facsimile: (408) 999-0301

Attorneys for Plaintiff Marshall Johnson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE

MARSHALL JOHNSON,

Plaintiff,

vs.

LOCKHEED MARTIN, and DOES 1-20,

Defendants.

Case No. **5:11-cv-01140 LHK**

**Date Action Filed: Feb. 16, 2011**

**Date of Trial: Aug. 27, 2012**

**Date of Motion: July, 17, 2012**

**Objection to All Evidence Offered in  
Support of Defendant's Motion for  
Summary Judgment/Summary  
Adjudication; Request for Issue  
Sanction (Liability) and Costs and  
Fees Against Defendant and  
Counsel;**

**F.R.Civ.P. 26 (a)(1)(A); (g)(3); Fed.  
Rules of Evidence 702, 703, 705.**

Plaintiff Marshall Johnson hereby objects to all declarations offered in support of Defendant's motion herein, on the basis that the Rule 26 (a)(1)(A) duty to disclose all persons with discoverable information was so substantially violated by defendant and counsel for defendant through his/her signed Initial Disclosure, and Supplemental Disclosure, that Plaintiff has been deprived of the right to a fair trial and proper pre-trial discovery. The persons disclosed did not offer any information about how the particular selection of Plaintiff occurred for the layoff that is the subject of this case.

The disclosed persons by defendant were Michelle Freeman, Gail Banford, and Holly Ramirez. (See Ex. A to Lamberto declaration). Discovery finally revealed through the

1 deposition of Gary Bartmann on the day before the close of discovery (March 16, 2012), that  
2 the actual decision about whom to lay off was made at a meeting in Denver some time in  
3 2009, attended by five persons: Michelle Freeman, Gary Bartmann, Holly Ramirez, someone  
4 named Shaeffer, and an unrecalled (by Bartmann) fifth person.

5 At all times relevant herein, upon information and belief, defendant and its counsel  
6 knew that Freeman was fighting a reportedly fatal cancer, and had advised defendant and its  
7 counsel that she would not participate in this matter, nor give a statement or deposition. She  
8 resides in Florida.

9 Holly Ramirez denied knowing, in her own deposition on October 13, 2011, that she  
10 knew how the decision to lay off Plaintiff was made, failing to mention that it was done at a  
11 meeting she attended, as referred to above. (See Ex. B to Lamberto declaration.) Susan Gail  
12 Banford was not present, and knew nothing about it how the decision was arrived at or made.  
13 When discovery parameters were set by the court, Plaintiff did not realize it was going to take  
14 six months to determine who the real witnesses were, at the close of discovery.

15 An effort to extend the discovery cutoff so Plaintiff could depose Shaeffer and  
16 compare his testimony to the proliferation of Bartmann declarations, was met with a refusal  
17 by **defendant**, which communicated the decision through counsel.

18 Finally, Plaintiff has been denied adequate discovery through the intentional  
19 misdirection of defendant and counsel for defendant through their affirmative signatures on  
20 the disclosures. Defendant now asserts that layoffs were not determined on the announced  
21 criteria (last 3 year job ratings, years of service, and use of differentiator for ties), but rather on  
22 Plaintiff being the odd man out in a “department” that was supposedly comprised of three  
23 persons: himself, Gary Ehle, and Daniel Faria, managed by Gail Banford. Plaintiff never  
24 knew, in 29 years, that he was supposedly in some kind of department (TC3S), with only Ehle  
25 and Faria, managed by Banford. Plaintiff has had virtually no opportunity to explore this  
26 assertion by defendant.

27 The court is aware of the gravity of supplying totally useless information to a party  
28 pursuant to Rule 26 (a), with the signature of counsel, who has a duty to make sure the

1 information is accurate. F.R.CIV.P. Rule 26(g)(3) allows the court to take appropriate action  
2 to rectify the damage done to Plaintiff in misdirecting and restricting Plaintiff's discovery into  
3 the reasons for his layoff, which he claims were race-based, since defendant has offered no  
4 verifiable alternative.

5 Moreover, not one piece of paper has been produced by defendant in discovery that  
6 identifies Plaintiff as a member of a 3 person "department" that supposedly **reported** to Gail  
7 Banford, as claimed.

8 The court certainly has the authority to bar the declarations of Bartmann in particular,  
9 and all others offered in support of the motion, based on the conduct of defendant in failing  
10 utterly to provide meaningful information per Rule 26(a)(1)(A). *Falconer v. Penn Mar., Inc.*  
11 (2005, DC Me) 232 FRD 37, 63 FR Serv 3<sup>rd</sup> 434. Under these circumstances, the court is  
12 hereby requested to bar all proof offered by defendant in support of the instant motion, and to  
13 grant this request for an Issue Sanction on the issue of defendant's liability on all causes of  
14 action herein.

15 Because the attorney affirmations on the Rule 26 disclosures (initial and supplemental  
16 by defendant), Plaintiff also requests sanctions in the form of costs and reasonable attorney's  
17 fees for deposing Banford and Rodriguez to find out they knew nothing about how the  
18 decision to lay off Plaintiff actually came down.

19 Dated: July 13, 2012

Law Office of Peter Lamberto

21 By: \_\_\_\_\_  
22 PETER N. LAMBERTO  
23 Attorneys for Plaintiff Marshall Johnson  
24  
25  
26  
27  
28

# Exhibit C

*Yates v. Delano Partners, LLC,*  
No. 4:10-CV-03073-CW

Docket number 79

GREENBERG TRAURIG, LLP  
GREGORY F. HURLEY (SBN 126791)  
MICHAEL J. CHILLEEN (SBN 210704)  
3161 Michelson Drive, Suite 1000  
Irvine, California 92612  
Telephone: (949) 732-6500  
Facsimile: (949) 732-6501  
E-mails: hurleyg@gtlaw.com; chilleenm@gtlaw.com

Attorneys for Defendants Arthur S. Becker, Trustee of the  
Arthur S. Becker Revocable Living Trust and Ralphs Grocery Company

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA - OAKLAND DIVISION**

CRAIG YATES, an individual,

Plaintiff,

vs.

DELANO RETAIL PARTNERS LLC, et al.,

Defendants.

CASE NO. CV 10-03073-CW

**DEFENDANTS ARTHUR S. BECKER,  
TRUSTEE OF THE ARTHUR S. BECKER  
REVOCABLE LIVING TRUST AND RALPHS  
GROCERY COMPANY'S OBJECTIONS TO  
THE DECLARATION OF THOMAS E.  
FRANKOVICH IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT**

Date: October 25, 2012

Time: 2:00 p.m.

Ctrm: 2

Assigned to: Honorable Claudia Wilken

Trial Date: None Set

**OBJECTION TO DECLARATION OF THOMAS E. FRANKOVICH**

Defendants hereby object to the following portions of the Declaration of Thomas E. Frankovich filed in support of Plaintiff's Motion for Summary Judgment (Dkt. 75-2) as follows:

**EVIDENTIARY OBJECTIONS**

| Testimony/Document  | Objection  | Court's Ruling |
|---|--|----------------|
| 1. "[A]n Equitable Settlement Agreement and Release relative to this action was entered into between DELANO RETAIL PARTNERS LLC and CRAIG YATES on October 7, 2010." (Frankovich Decl., ¶1.)  | Evidence of a Compromise Not Admissible to Prove Liability (Fed. R. Evid. 408); Lacks Foundation (Fed. R. Evid. 104); Lacks Relevance (Fed. R. Evid. 401, 402, 403).   |                |
| 2. Exhibit A (Equitable Settlement Agreement) in its entirety.  | Evidence of a Compromise Not Admissible to Prove Liability (Fed. R. Evid. 408); Inadmissible Hearsay (Fed. R. Evid. 801, 802); Lacks Relevance (Fed. R. Evid. 401, 402, 403); Confusing and Waste of Time (Fed. R. Evid. 403).                             |                |
| 3. "The salient paragraphs of the Equitable Settlement Agreement and Release are as follows:<br><br><b>Equitable Relief</b> - ¶3 of the Equitable Agreement.<br><br>As to the equitable relief demanded by YATES, YATES agrees that as consideration for the settlement, DELANO RETAIL PARTNERS LLC, a California Limited Liability Company dba | Evidence of a Compromise Not Admissible to Prove Liability (Fed. R. Evid. 408); Inadmissible Hearsay (Fed. R. Evid. 801, 802); Lacks Relevance (Fed. R. Evid. 401, 402, 403); Confusing and Waste of Time (Fed. R. Evid. 403); Document Speaks for Itself. |                |

DELANO’S MARKET; shall cause modifications to be constructed in compliance with the more restrictive requirements of either Title 24 of the California Building Standards Code or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq. to ensure complying access to the public accommodation known as Delano’s Market, located at/near 6333 Geary Boulevard, San Francisco, California, and thereafter, to maintain such access as follows:

- a. provide directional signage to show the accessible routes of travel to the path(s) of travel to the restrooms;
- b. provide the requisite type and number of disabled parking stall(s);
- c. provide disabled van accessible parking stall(s);
- d. provide handicapped accessible parking signage;
- e. provide tow-a-way signage; and
- f. provide an accessible interior entrance.” (Frankovich Decl., ¶1.)

|    |  |   |  |
|----|--|---|--|
| 1  | 4. “The salient paragraphs of the                  | Evidence of a Compromise Not Admissible                   |  |
| 2  | Equitable Settlement Agreement and                 | to Prove Liability (Fed. R. Evid. 408);                   |  |
| 3  | Release are as follows: . . . <b>Completion of</b> | Inadmissible Hearsay (Fed. R. Evid. 801,                  |  |
| 4  | <b>Work</b> - ¶4 of the Equitable Agreement        | 802); Lacks Relevance (Fed. R. Evid. 401,                 |  |
| 5  | DELANO RETAIL PARTNERS LLC shall                   | 402, 403); Confusing and Waste of Time                    |  |
| 6  | complete the modifications to the premises,        | (Fed. R. Evid. 403); Document Speaks for                  |  |
| 7  | which shall render the premises fully              | Itself.   |  |
| 8  | accessible as set forth herein, by <b>January</b>  |   |  |
| 9  | <b>31, 2011.”</b> (Frankovich Decl., ¶1.)          |   |  |
| 10 | 5. “[P]aragraph 17. Of [sic] the                   | Evidence of a Compromise Not Admissible                   |  |
| 11 | Equitable Agreement bears the signatures of        | to Prove Liability (Fed. R. Evid. 408);                   |  |
| 12 | plaintiff CRAIG YATES and Dennis                   | Lacks Relevance (Fed. R. Evid. 401, 402,                  |  |
| 13 | Delano manager/member of DELANO                    | 403); Confusing and Waste of Time (Fed.                   |  |
| 14 | RETAIL PARTNERS LLC.” (Frankovich                  | R. Evid. 403); Document Speaks for Itself.                |  |
| 15 | Decl., ¶2.)  |   |  |
| 16 | 6. “[T]his declarant and attorney                  | Evidence of a Compromise Not Admissible                   |  |
| 17 | Joseph Neri counsel for DELANO RETAIL              | to Prove Liability (Fed. R. Evid. 408);                   |  |
| 18 | PARTNERS LLC., drafted this agreement              | Lacks Relevance (Fed. R. Evid. 401, 402,                  |  |
| 19 | and it bears the names and the parties             | 403); Confusing and Waste of Time (Fed.                   |  |
| 20 | executing this Agreement.” (Frankovich             | R. Evid. 403); Document Speaks for Itself.                |  |
| 21 | Decl., ¶3.)  |   |  |
| 22 | 7. Exhibit B (Deposition of Steven C.              | Plaintiff attached the entire Deposition                  |  |
| 23 | Becker) in its Entirety.                           | Transcript and failed to Provide Relevant                 |  |
| 24 |  | <i>Extracts</i> of Deposition Transcript. <i>See</i> L.R. |  |
| 25 |  | 7-5(a); Lacks Relevance (Fed. R. Evid. 401,               |  |
| 26 |  | 402, 403); Confusing and Waste of Time                    |  |
| 27 |  | (Fed. R. Evid. 403); Hearsay (Steven                      |  |
| 28 |  | Becker is not a party).                                   |  |

1 DATED: September 27, 2012

GREENBERG TRAURIG, LLP

3 By /s/ Michael J. Chilleen

Gregory F. Hurley

Michael J. Chilleen

Attorneys for Defendants Arthur S. Becker, Trustee of the

Arthur S. Becker Revocable Living Trust and

Ralphs Grocery Company

# Exhibit D

*Gauntlett v. Ill. Union Ins. Co.,*  
No. 5:11-CV-00455-EJD

Docket number 39

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

LANE J. ASHLEY, (SBN 073296)

E-Mail: ashley@lbbslaw.com

**RAQUEL VIDAL** (SBN 199597)

E-Mail: vidal@lbbslaw.com

221 North Figueroa Street, Suite 1200

Los Angeles, California 90012

Telephone: 213.250.1800

Facsimile: 213.250.7900

Attorneys for Defendant ILLINOIS UNION  
INSURANCE COMPANY

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**DAVID A. GAUNTLETT d/b/a  
GAUNTLETT & ASSOCIATES,**  
a sole proprietorship,

Plaintiff,

vs.

**ILLINOIS UNION INSURANCE  
COMPANY,** an Illinois corporation,

Defendant.

CASE NO. 11-CV-00455 EJD

Hon. Edward J. Davila

**ILLINOIS UNION INSURANCE  
COMPANY'S OBJECTIONS TO  
DECLARATION OF ROBERT T.  
ALANIZ IN OPPOSITION TO  
ILLINOIS UNION'S MOTION FOR  
SUMMARY JUDGMENT**

DATE: April 6, 2012  
TIME: 9:00 a.m.  
CTRM: 1, 5<sup>TH</sup> Floor

**OBJECTIONS TO DECLARATION OF ROBERT T. ALANIZ**

Defendant Illinois Union Insurance Company ("Illinois Union") submits the following objections to the declaration of Robert T. Alaniz.

///

///

///

///

///

**GENERAL OBJECTION**

Illinois Union generally objects to the entire declaration of Mr. Alaniz on the ground that it lacks foundation. Mr. Alaniz's declaration does not provide sufficient facts to establish that he has personal knowledge of the matters set forth in his declaration. Accordingly, Mr. Alaniz's declaration fails to conform to the requirements of Federal Rule of Civil Procedure 56(e), violates Federal Rule of Evidence 602 and should be stricken in its entirety in accordance with United States District Court, Northern District of California, Local Rule 7-5(b).

| DECLARATION   | OBJECTION   |
|---|---|
| 3. Miriam Tarzi ("Tarzi") was formerly employed by G&A until May 14, 2007. She filed a lawsuit against G&A, styled as <i>Tarzi v. Gauntlett &amp; Associates, et al.</i> , Consolidated Superior Courts of California, County of Orange, Central District, Case No. 07-CC-08999 (the " <i>Tarzi action</i> ") on August 16, 2007.   | 3. Lacks foundation. (See General Objection.)             |
| 4. In May 2007 G&A employed Talon Executive Services ("Talon"), a computer forensic analysis firm, who arranged for the analysis of a computer that had been used by Tarzi while employed at G&A. The process undertaken on behalf of G&A was for Talon to take and copy the hard drive from Tarzi's computer and inspect it, looking for email and other Internet traffic. | 4. Lacks foundation. (See General Objection.) Irrelevant. |

| 1  | DECLARATION                                     | OBJECTION                               |
|----|---|---|
| 2  | 5. At G&A's direction, a key                    | 5. Lacks foundation. (See               |
| 3  | word search of the hard drive was               | General Objection.) Secondary evidence. |
| 4  | performed seeking information on any            | Irrelevant.                             |
| 5  | non-business use by Tarzi of the computer.      |   |
| 6  | Reports were made by Talon to G&A               |   |
| 7  | between May 11 and May 30, 2007.                |   |
| 8  | 6. The search of Tarzi's Outlook                | 6. Lacks foundation. (See               |
| 9  | email activity identified e-mails of Tarzi      | General Objection.) Conclusory.         |
| 10 | that were not related to any G&A business       | Irrelevant.                             |
| 11 | activity.                                       |   |
| 12 | 7. Analysis of Tarzi's hard drive               | 7. Lacks foundation. (See               |
| 13 | included preliminary inspection of              | General Objection.) Conclusory.         |
| 14 | archived emails that Tarzi later alleged in     | Speculative. Irrelevant.                |
| 15 | the <i>Tarzi</i> action as having been deleted; |   |
| 16 | this included reconstruction of deleted or      |   |
| 17 | partially deleted or overwritten files on her   |   |
| 18 | hard drive. The emails that Tarzi alleged       |   |
| 19 | as having been deleted were, in fact,           |   |
| 20 | reviewed and sometimes reconstructed for        |   |
| 21 | that review. Analysis of Tarzi's hard drive     |   |
| 22 | also disclosed emails to and from personal      |   |
| 23 | web based email accounts of Tarzi.              |   |
| 24 | During the preliminary review of the            |   |
| 25 | computer files it was observed, for             |   |
| 26 | example, that Tarzi's computer had              |   |
| 27 | interacted with websites associated with        |   |

| 1  | DECLARATION  | OBJECTION  |
|--|--|--|
| 2<br>3<br>4<br>5<br>6                              | Arman Tarzi (a non-employee) and research had been done to identify and possibly purchase a new website, www.tarzi.org, activity having nothing to do with the business of G&A.  |  |
| 7<br>8<br>9<br>10<br>11                            | 8. The preliminary analysis by Talon for G&A revealed that there was likely private information on the hard drive and communications of a non-business nature made by Tarzi on the computer.   | 8. Lacks foundation. (See General Objection.) Conclusory. Speculative. Irrelevant.           |
| 12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20 | 9. Notice of Tarzi's claim was promptly given to defendant National Union and a copy of the Tarzi complaint was provided to National Union on or about September 4, 2007, immediately after service on G&A, On September 27, 2007, National Union denied the defense but never requested any additional information. | 9. Lacks foundation. (See General Objection.) Conclusory. Argumentative. Secondary evidence. |
| 21<br>22<br>23<br>24<br>25<br>26<br>27<br>28       | 10. After this coverage lawsuit was filed, G&A's attorney served Initial Disclosures on National Union's attorney on April 28, 2011, see <b>Exhibit "4"</b> attached. That document discloses the names of witnesses, including David A. Gauntlett and attorneys defending the                                       | 10. Lacks foundation. (See General Objection.) Conclusory. Argumentative. Speculative.       |

| 1  | DECLARATION                                 | OBJECTION                       |
|----|---|---------------------------------|
| 2  | underlying suit as well as documents        |                                 |
| 3  | potentially relevant to the case. Had       |                                 |
| 4  | National Union wished to do so, it could    |                                 |
| 5  | have obtained further information about     |                                 |
| 6  | the forensic investigation of the Tarzi     |                                 |
| 7  | computer from the witnesses or the          |                                 |
| 8  | documents made available to National        |                                 |
| 9  | Union. That inquiry would have disclosed    |                                 |
| 10 | the above information concerning the Tarzi  |                                 |
| 11 | allegations about invasion of privacy       |                                 |
| 12 | raised in her underlying complaint.         |                                 |
| 13 | 11. Reports of Talon's activity on          | 11. Lacks foundation. (See      |
| 14 | behalf of G&A and the results of the        | General Objection.) Conclusory. |
| 15 | preliminary analysis presented by Talon     | Argumentative. Speculative.     |
| 16 | would have been available to the insurer,   |                                 |
| 17 | had it requested that information or had it |                                 |
| 18 | defended the lawsuit and investigated any   |                                 |
| 19 | claims.                                     |                                 |
| 20 | 12. Illinois Union's denial letter          | 12. Lacks foundation. (See      |
| 21 | did not analyze coverage or promise its     | General Objection.) Conclusory. |
| 22 | denial upon review of its express coverage. | Argumentative.                  |
| 23 | <b>Inappropriate employment conduct</b>     |                                 |
| 24 | pursuant to the following provisions:       |                                 |
| 25 | <b>Inappropriate employment</b>             |                                 |
| 26 | <b>conduct</b> means any actual or          |                                 |
| 27 | alleged: . . . .                            |                                 |
| 28 | 3. Employment-related                       |                                 |
|    | misrepresentations . . . .                  |                                 |

| 1  | DECLARATION                                    | OBJECTION                           |
|----|--|-------------------------------------|
| 2  | employee . . .                                 |                                     |
| 3  | 6. Employment related libel,                   |                                     |
| 4  | slander, defamation of                         |                                     |
| 5  | character or any invasion of                   |                                     |
| 6  | right of privacy of an                         |                                     |
| 7  | employee . . .                                 |                                     |
| 8  | A copy of the September 27, 2007               |                                     |
| 9  | denial letter of Illinois Union is attached as |                                     |
| 10 | <b>Exhibit “3.”</b>                            |                                     |
| 11 | DATED: January 20, 2012                        | LANE J. ASHLEY                      |
| 12 |  | RAQUEL VIDAL                        |
| 13 |  | LEWIS BRISBOIS BISGAARD & SMITH LLP |
| 14 |  |                                     |
| 15 |  | By: <u>/s/ Raquel Vidal</u>         |
| 16 |  | Raquel Vidal                        |
| 17 |  | Attorneys for Defendant             |
| 18 |  | ILLINOIS UNION INSURANCE            |
| 19 |  | COMPANY                             |
| 20 |  |                                     |
| 21 |  |                                     |
| 22 |  |                                     |
| 23 |  |                                     |
| 24 |  |                                     |
| 25 |  |                                     |
| 26 |  |                                     |
| 27 |  |                                     |
| 28 |  |                                     |

**FEDERAL COURT PROOF OF SERVICE**

Case: *Gauntlett, etc., v. Illinois Union, etc.*  
U.S.D.C. Case No. 11-CV-00455 EJD

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On January 20, 2012, I served the following document(s): **ILLINOIS UNION INSURANCE COMPANY'S OBJECTIONS TO DECLARATION OF ROBERT T. ALANIZ IN OPPOSITION TO ILLINOIS UNION'S MOTION FOR SUMMARY JUDGMENT**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

David A. Gauntlett, Esq.  
James A. Lowe, Esq.  
GAUNTLETT & ASSOCIATES  
18400 Von Karman, Suite 300  
Irvine, CA 92612  
Tel. No.: (949) 553-1010  
Fax No.: (949) 553-2050  
info@gauntlettlaw.com  
Jal@gauntlettlaw.com

Attorneys for Plaintiff  
GAUNTLETT & ASSOCIATES

The documents were served by the following means:

**[X] (BY COURT'S CM/ECF SYSTEM)** Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on January 20, 2012, at Los Angeles, California.

/s/ Raquel Vidal  
RAOUEL VIDAL

# Exhibit E

*Oak Point Partners, Inc. v.  
Lessing*, No. 5:11-CV-03328-  
LHK

Docket number 40

MICHAEL I. GOTTFRIED (State Bar No. 146689)  
PETER M. BRANSTEN (State Bar No. 113352)  
ALEKSANDRA ZIMONJIC (State Bar No. 210252)  
LANDAU GOTTFRIED & BERGER LLP  
1801 Century Park East, Suite 700  
Los Angeles, California 90067  
Telephone: (310) 557-0050  
Facsimile: (310) 557-0056

Attorneys for Defendant Dr. Holger Lessing as insolvency  
administrator for Exodus Communications GmbH

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

OAK POINT PARTNERS, INC.,

Plaintiff,

vs.

DR. HOLGER LESSING, not individually,  
but only in his capacity as the insolvency  
administrator in charge of the assets of Exodus  
Communications GmbH,

Defendant.

Case No.: 5:11-cv-03328-LHK

OBJECTIONS OF DEFENDANT TO  
DECLARATION OF JANICE A. ALWIN  
IN SUPPORT OF OPPOSITION OF OAK  
POINT PARTNERS, INC. TO MOTION  
OF DEFENDANT DR. HOLGER  
LESSING TO SET ASIDE DEFAULT  
JUDGMENT ON THE GROUND THAT  
THE JUDGMENT IS VOID, OR, IN THE  
ALTERNATIVE, ON THE GROUND  
THAT THE JUDGMENT IS DUE TO  
EXCUSABLE NEGLECT

Date: September 20, 2012  
Time: 10:00 a.m.  
Place: Courtroom 8

Defendant Dr. Holger Lessing hereby objects as follows to the Declaration of Janice A. Alwin in  
Support of Opposition of Plaintiff Oak Point Partners, Inc. to Motion of Defendant Dr. Holger  
Lessing to Set Aside Default Judgment on the Ground that the Judgment is Void, Or, in the  
Alternative, on the Ground that the Judgment is Due to Excusable Neglect (the "Declaration").

| EVIDENCE  | DEFENDANT'S OBJECTIONS  |
|---|---|
| <p>Paragraph 4, lines 16-18 of the Declaration: "A true and correct copy of the Note is appended to the Complaint (RJN, Ex. A) and Oak Point's original claim (Lessing Decl., Ex. E.). Oak Point currently holds the original Note in its possession."</p>  | <p>a) Lack of foundation for authentication of the Note. Federal Rule of Evidence 901.</p> <p>b) Lack of personal knowledge. Federal Rule of Evidence 602.</p>  |
| <p>Paragraph 5, lines 18-21 of the Declaration: "As set forth in the Note, Exodus Germany obtained a loan of approximately \$23 million from EXDS for the purpose of financing the construction of Internet Data Centers in Frankfurt, Germany."</p>  | <p>a) Lack of foundation for authentication of the Note. Federal Rule of Evidence 901.</p> <p>b) Lack of personal knowledge. Federal Rule of Evidence 602.</p> <p>c) Best Evidence Rule. Federal Rule of Evidence 1002.</p> |
| <p>Paragraph 5, lines 21-22 of the Declaration: "Through research of public records, I have confirmed that the intended construction was ultimately completed."</p>   | <p>a) Hearsay. Federal Rule of Evidence 802.</p> <p>b) Lack of personal knowledge. Federal Rule of Evidence 602.</p>  |
| <p>Paragraph 6, lines 23-26 of the Declaration: "Pursuant to that certain Asset Purchase Agreement and Assignment of Claims and Interests dated September 6, 2007 ("APA") by and between Oak Point and EXDS, through its Plan Administrator, Oak Point acquired ("Sale") all right, title, and interest in and to, among other things, the Note."</p> | <p>a) Hearsay. Federal Rule of Evidence 802.</p> <p>b) Best Evidence Rule. Federal Rule of Evidence 1002.</p>   |
| <p>Paragraph 7, lines 1-3 of the Declaration: "Following the Sale, the EXDS Plan Administrator confirmed that the amount due</p>  | <p>a) Hearsay. Federal Rule of Evidence 802.</p> <p>b) Lack of personal knowledge. Federal Rule of Evidence 602.</p>  |

1 and owing under the Note has not been paid and  
2 helped to facilitate initial communications  
3 between Oak Point and Defendant.”

c) Best Evidence Rule. Federal Rule of  
Evidence 1002.

4  
5  
6 Dated: May 24, 2012

LANDAU GOTTFRIED & BERGER LLP

7  
8 By: /s/Peter M. Bransten

PETER M. BRANSTEN

9 Attorneys for Dr. Holger Lessing as insolvency  
10 administrator for Exodus Communications GmbH  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LANDAU GOTTFRIED & BERGER LLP  
ATTORNEYS AT LAW  
LOS ANGELES, CALIFORNIA